Calendar No. 942

97TH CONGRESS, 2d Session | SENATE | REPORT No. 97-654

PROVIDING FOR THE USE AND DISTRIBUTION OF CLALLAM JUDGMENT FUNDS IN DOCKET NUMBERED 134 BEFORE THE INDIAN CLAIMS COMMISSION, AND FOR OTHER PURPOSES

OCTOBER 1 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

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Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1340]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1340) to provide for the use and distribution of Clallam judgment funds in Docket Numbered 134 before the Indian Claims Commission, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 2, line 10, strike out "80" and insert in lieu thereof "20".
2. On page 2, lines 11 and 12, strike out the words "in an investment program and 20 per centum".
3. On page 2, line 15, strike out the period and insert at the end of the line "and the balance in an investment program."
4. On page 2, line 17, after the word "that" and before the figure "80", insert the words "the balance".
5. On page 2, line 20, strike out "20 percentum" and insert in lieu thereof the words "the balance".
6. On page 2, line 25, after the word "that" and before the figure "50" insert the words "up to".
7. On page 3, lines 1 and 2, strike out "50 percentum" and insert in lieu thereof the words "the balance".
8. On page 3, strike out all of line 3 through the end of line 15. In lieu thereof add the following new sections 5 and 6:

> SEC. 5. (a) The shares of funds apportioned under the first section of this Act shall be advanced to the respective groups within 60 days of this Act, *Provided*, That in the case of the Jamestown Band, a formal organization has been approved by

S963-12

the Secretary. At the time the funds are advanced, the Secretary shall account to the respective groups for all investments made and income received since May 4, 1977.

(b) Except as otherwise provided in this section, funds held and administered by the respective groups which are the subject of this Act, and income derived therefrom, shall be treated in the same fashion as if held in trust by the Secretary of the Interior, *Provided*, Such funds may be invested or expended by the respective groups in accordance with their plans without requirement of prior approval by the Secretary.

(c) Upon advancement of the funds to the respective groups the Secretary shall have no further trust responsibility for the investment, supervision, administration or expenditure of such funds, and the United States shall be exempt from any liability for such investment, supervision, administration or expenditure of such funds."

SEC. 6. None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act."

PURPOSE

Funds to satisfy claims in docket numbered 134 were appropriated on May 4, 1977. The 1973 Indian Judgment Fund Act (Public Law 93–134; 25 U.S.C. 1401–1407) requires the Department of Interior to hold a hearing of record and transmit a plan of proposed distribution to Congress within 180 days of the appropriation of funds in satisfaction of an Indian Claims Commission judgment. A 90 day extension of this time may be granted upon request. After submittal of the plan to Congress the plan must be implemented within 60 days of transmittal unless disapproved by a resolution of either the Senate or the House. Although the affected tribes submitted draft distribution plans to the Bureau of Indian Affairs in September, 1977, no action was taken by the Department of the Interior on the draft plans until September, 1979. Because the Department of the Interior failed to forward an approved plan to Congress within the required time limit, the purpose of S. 1340 is to provide for use and distribution of judgment funds awarded to the Clallam Tribe of Indians in accordance with plans developed by the Tribe under the procedures of the 1973 Act.

BACKGROUND

On May 4, 1977, pursuant to 91 Stat. 61, funds were appropriated in satisfaction of a judgment awarded in favor of the Clallam Tribe of Indians of the State of Washington by the Indian Claims Commission in docket numbered 134. The Indian Claims Commission had issued a final award of $385,820 in favor of the Clallam Tribe on November 5, 1976.

The award represents additional compensation for 438,430 acres of land ceded by the Clallam Tribe to the United States by the Treaty of Point-No-Point of January 25, 1855. The fair market value of land was $440,000 as of March 8, 1859, the effective date of the treaty. The

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Commission determined that $39,180 in treaty payments had been made to the Clallam Tribe. This determination was based, in the absence of treaty apportionment, on the approximate tribal population of the four tribes participating in the 1855 treaty. The Commission also allowed an offset of $15,000 for the purchase of the Port Gamble tract, which was outside the ceded area.

The Clallam bands prepared tribal proposals for the use of the funds and agreed to a one-third division of the funds among themselves. This allocation is reflected in their tribal resolutions.

The Port Gamble Indian community is organized on a band basis under the Indian Reorganization Act of 1934, with a constitution and bylaws. The Lower Elwha tribal community is organized on a residence basis under the Indian Reorganization Act, with a constitution and bylaws. The Jamestown Band was federally acknowledged as an Indian tribe on February 10, 1981 and is expected to adopt a formal organization. The adoption of such an organization will be subject to secretarial approval, and under S. 1340, the band's share of funds would be advanced only to such an approved organization.

LEGISLATIVE HISTORY

S. 1340 was introduced by Senators Gorton and Jackson on June 8, 1981. Hearings were held by the Select Committee on Indian Affairs on July 30, 1981. S. 1340 was marked up and ordered reported out of the Senate Select Committee on Indian Affairs on May 13, 1982.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on May 13, 1982, with a quorum present recommends by a unanimous vote that the Senate pass S. 1340 as amended.

SECTION-BY-SECTION ANALYSIS

Section 1

Authorizes the distribution of awards in docket numbered 134 of the United States Court of Claims to the Port Gamble Indian Community, the Lower Elwha Tribal Community, and the Jamestown Band of Clallam Indians.

Section 2

Provides that the share of funds apportioned to the Port Gamble Indian Community shall be used as provided in tribal resolution 79–A1 of January 9, 1979, requiring that 20 per centum be used in a revenue supplement fund for community projects and the balance in an investment program.

Section 3

Provides that the share of funds apportioned to the Lower Elwha Tribal Community shall be used as provided in tribal resolution 8B–78 of August 27, 1978, requiring up to 80 per centum be used in a land acquisition program that includes payment of an outstanding loan on land purchased by the community and the balance in economic development projects for the benefit of all tribal members.

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Section 4

Provides that the share of funds apportioned to the Jamestown Band of Clallam Indians shall be used as provided by resolution 78–1 of October 1, 1978, requiring up to 50 per centum be used in a land acquisition program and the balance in a business development program.

Section 5

(a) Provides that the shares of funds apportioned under the Act shall be advanced to the respective groups within 60 days of the Act, provided that in the case of the Jamestown Band, a formal organization has been approved by the Secretary. Requires the Secretary to account to the respective groups at the time the funds are advanced, for all investments made and income received since May 4, 1977.

(b) Provides that funds held and administered by the respective groups and the income derived therefrom shall be treated in the same fashion as if held in trust of the Secretary of the Interior, provided that such funds may be invested or expended by the respective groups in accordance with their plans without prior approval by the Secretary.

(c) Provides that the Secretary of the Interior shall have no further trust responsibility for the investment, supervision, administration or expenditure of funds upon advancement of the funds to the respective groups and that the United States shall be exempt from any liability for investment, supervision, administration or expenditure of such funds.

Section 6

Provides that none of the funds distributed under the Act shall be subject to Federal or State income taxes and that none of the funds distributed under the Act shall be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1340, as amended, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 20, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1340, a bill to provide for the use and distribution of Clallam judgment funds in docket numbered 134 before the Indian Claims Commission, and for other purposes, as amended and ordered reported by the Senate Select Committee on Indian Affairs, May 13, 1982.

Based on this review, it is expected that enactment of this bill would not result in any additional costs to the government. The bill provides for the specific distribution of funds appropriated in 1977 to settle outstanding claims of the Clallam Tribe of Indians of the State of Washington.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director.)

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1340 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The pertinent communication received by the Committee from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 26, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our comments on the amendments proposed by your Committee staff on S. 1340, a bill to provide for the use and distribution of Clallam judgment funds.

We would not object to proposed Amendments 1, 2, and 3, which are technical in nature. We offer the following comments on Amendment 4:

1. Section 5 of Amendment 4 would provide that the funds be advanced to the respective groups, with the exception of the Jamestown Band, within 60 days after the date of enactment and would exempt the United States from any further liability upon such advancement. Since the plans adopted by the tribal resolutions described in S. 1340 are complete and thorough, we would not object to this provision. However, we believe that the provision in subsection 5(a) relating to a full account by the Secretary at the time the funds are advanced is unnecessary. A complete account of the principal and interest or income accrued is usually included when judgment funds are advanced. Further, Indian tribes may obtain this information anytime prior to the advancement of funds upon request.

2. Consistent with the Department's statement given at the Committee's July 30, 1981, hearing, we recommend the following new section in lieu of sections 6 and 7 of Amendment 4:

> SEC. 6. None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act."

For purposes of Federal and State taxation, section 7 (as proposed in the staffs' amendments) would grant the funds advanced to the tribes the same legal status they would have if the funds were held

in trust and invested by the Secretary under 25 U.S.C. 162a. We oppose such a provision because it is unnecessary as the Internal Revenue Service has ruled that Indian tribes are not taxable entities under the Internal Revenue Code. Tribal income distributed to or constructively received by tribal members is, however, includable in the members' gross income under the Internal Revenue Code. In addition, amounts paid to tribal council members or officers are subject to income tax. (Rev. Rul. 67–284).

It does not appear that the proposed uses of the judgment funds under S. 1340 would result in taxation of such funds. For example, any income derived from funds which would be invested by the respective groups, as tribal entities, would not be subject to taxation. However, if such investment income were distributed per capita or in the form of salaries and wages, such income would be includable in the individual's gross income.

We hope that the foregoing comments will be helpful to the Committee.

Sincerely,

ROY H. SAMPSEL,
Acting Assistant Secretary—Indian Affairs.

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